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No.: ICC-02/05-01/20
Date: 5 February 2021

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**with SECRET, *EX PARTE*, only available to the Prosecution, Annex 1
Confidential, *EX PARTE*, only available to the Prosecution, Annex 2
Confidential Annexes 3 and 4**

**Prosecution’s eleventh progress report on the evidence review, translation and
disclosure process**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Prosecution submits its eleventh progress report on the evidence review, translation and disclosure process in accordance with the orders of Pre-Trial Chamber II (“Chamber”), issued on 17 August 2020¹ and 2 October 2020.² The Prosecution also provides updates on an additional issue in accordance with the Chamber’s decision, issued on 12 October 2020.³

II. CLASSIFICATION

2. Pursuant to regulation 23bis(1) of the Regulations of the Court and regulation 14 of the Regulations of the Registry, the Prosecution classifies Annex 1 to this report as secret, *ex parte*, only available to the Prosecution, since it contains highly sensitive information relating to the Prosecution’s ongoing investigation. Annex 2 is classified as confidential, *ex parte*, only available to the Prosecution, since it contains information pertaining to documents in the Prosecution’s collection subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute. Annex 3 is classified as confidential since it contains information relating to the Prosecution’s witnesses. Pursuant to regulation 23bis(2), Annex 4 is classified as confidential as it concerns a decision and filings with the same classification.

III. SUBMISSIONS

3. This report updates the Chamber on progress made in relation to the evidence review, translation and disclosure process since the Prosecution’s tenth progress report submitted on 22 January 2021.⁴ The Prosecution will address in turn each of the specific topics on which the Chamber has requested information. The last section of this report and Annex 4 provide an update on an additional issue in accordance with the Chamber’s decision, issued on 12 October 2020.⁵

¹ ICC-02/05-01/20-116, paras. 16-17 and p. 8.

² ICC-02/05-01/20-169, para. 19 and p. 20-21, order (f).

³ ICC-02/05-01/20-181-Conf, para. 13 and p. 6.

⁴ ICC-02/05-01/20-265.

⁵ ICC-02/05-01/20-181-Conf, para. 13 and p. 6.

*Confirmation as to when the Prosecutor has made available to the Defence all evidence and supporting material relied upon for the purposes of the First Warrant and the Second Warrant, subject only to the adoption of protective measures pursuant to rule 87 of the Rules*⁶

4. Since the last progress report,⁷ the Prosecution has re-disclosed items related to one witness with fewer redactions.⁸ Of the total of 278 items cited in the Prosecution's applications under article 58 of the Statute ("Applications"), the number of disclosed items remains 251, including 44 witnesses. The remaining 27 items, including material related to 22 witnesses, will be disclosed in the coming weeks.

*Number and type of the items of evidence in the possession or control of the Prosecutor still requiring first and/or second review in order to determine whether it should be disclosed*⁹

5. There are currently 34,803 items (176,837 pages) registered in the Prosecution's Ringtail database. To date, the Prosecution has reviewed 20,780 items (112,075 pages). There remain 14,023 items (64,762 pages) in the collection still requiring both primary and secondary review, which include newly registered evidence. The Prosecution continues to prioritise the review of the material related to the witnesses whose evidence will be relied upon at the confirmation hearing, were cited in the Applications, and those responsive to keyword searches.

*Estimated timeline for evidence review and disclosure of all evidence in possession or control of the Prosecutor at the time of reporting*¹⁰

6. The provisional list of witnesses for the confirmation hearing now stands at 107 witnesses,¹¹ of which the Prosecution has already disclosed material related to 73 witnesses. The material related to the remaining 34 witnesses will be disclosed in the coming weeks, in line with the Chamber's deadline.

⁶ ICC-02/05-01/20-169, para. 19(i) and p. 20, order (f)(a).

⁷ ICC-02/05-01/20-265, para. 4.

⁸ P-0091 was re-disclosed on 29 January 2021 (INCRIM Package 20). See also ICC-02/05-01/20-273, para. 4.

⁹ ICC-02/05-01/20-169, para. 19(ii) and p. 20, order (f)(b).

¹⁰ ICC-02/05-01/20-169, para. 19(iii) and p. 20, order (f)(c).

¹¹ Two recently interviewed witnesses have been added: P-0877 and P-0892. This is also reflected in Annex 3 to this report.

7. The above numbers do not include other disclosed witnesses that the Prosecution does not currently intend to rely on for the purposes of the confirmation hearing. To date, the Prosecution has disclosed an additional eight witnesses not included on its current witness list for the confirmation hearing, making a total of 81 witnesses disclosed to date.

8. Annex 3 to this report, tailored in accordance with the Single Judge's instructions conveyed by email on 19 January 2021,¹² contains the updated information in relation to the recently disclosed witnesses.

*Number and type of all items disclosed during the relevant period*¹³

9. Since the last progress report, primary review has been carried out on 3,190 items (26,577 pages), of which 295 items (4,512 pages) have been recommended for disclosure.

10. On 29 January 2021, the Prosecution disclosed 171 items (1,203 pages) to the Defence.¹⁴ The disclosed items are in the following packages:

- Pre-Confirmation INCRIM package 18: contains 18 items (88 pages);
- Pre-Confirmation INCRIM package 19: contains 23 items (93 pages);
- Pre-Confirmation INCRIM package 20: contains 22 items (557 pages);
- Pre-Confirmation Rule 77 package 13: contains 108 items (465 pages);

11. INCRIM Package 18 contains items that belong to the witnesses whose evidence will be relied upon at the confirmation hearing. INCRIM Package 19 contains items that belong to the witnesses whose identities cannot be disclosed at this stage with the exception of witness P-0091. INCRIM Package 20 contains Arabic translations of the previously disclosed witness statements.

¹² ICC-02/05-01/20-265, para. 8.

¹³ ICC-02/05-01/20-169, para. 19(iv) and p. 20, order (f)(d).

¹⁴ ICC-02/05-01/20-273 + Conf-Anxs.

*Number and type of items identified as disclosable but not yet disclosed, including a detailed explanation as to the relevance to the Prosecutor's case, the obstacles that have prevented the Prosecutor from disclosing the items, and steps taken to overcome them*¹⁵

12. In relation to witness protection issues, since 22 January 2021 the Protection Strategies Unit of the Office of the Prosecutor ("PSU") has provided clearance in relation to four additional witness, amounting to a total of 93 witnesses. This number includes confirmation witnesses, as well as other witnesses not included on the Prosecution's current witness list. The Prosecution continues to re-establish contact with additional relevant witnesses.

*A detailed schedule of any investigative step the Prosecutor may plan to conduct before the confirmation hearing, notifying the Chamber of any obstacles that may arise*¹⁶

13. Annex 1 to this report contains an updated list of investigative steps being undertaken by the Prosecution in preparation for the confirmation hearing. As stated in the previous progress reports,¹⁷ the COVID-19 pandemic continues to negatively impact the Prosecution's work, primarily in relation to the collection of evidence.¹⁸

*Documents subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute*¹⁹

14. Annex 2 to this report contains the updated information in relation to the documents in the Prosecution's collection subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute.

*Detailed list of all witness statements to be relied upon for the purposes of the confirmation hearing, indicating whether transcripts and/or translation into Arabic so far exist and the progress made in this regard*²⁰

¹⁵ ICC-02/05-01/20-169, para. 19(v) and p. 21, order (f)(e).

¹⁶ ICC-02/05-01/20-169, para. 19(vi) and p. 21, order (f)(f).

¹⁷ ICC-02/05-01/20-200, paras. 14 and 15; ICC-02/05-01/20-207, paras. 14 and 15; ICC-02/05-01/20-265, paras. 15-16.

¹⁸ See ICC-02/05-01/20-157-Conf-Exp-Corr, paras. 25-26.

¹⁹ ICC-02/05-01/20-169, paras. 26-28 and p. 21, order (f)(g).

²⁰ ICC-02/05-01/20-169, p. 21, order (f)(h).

15. Annex 3 to this report contains a list of the witness statements and transcripts relating to the 107 witnesses that the Prosecution intends to rely upon for the purposes of the confirmation hearing, and the progress made to date in relation to their transcription and translation into Arabic. An additional column titled “Disclosure Date of Translation” has been added to Annex 3 to reflect the status of the disclosure of the draft statements.

16. During the reporting period, the Language Services Unit (“LSU”) completed five additional draft translations. Of the 107 witness statements listed in Annex 3, draft translations are pending only for two witnesses which were recently placed on the provisional confirmation list of witnesses.²¹

17. Lastly, on 29 January 2021, the Prosecution disclosed 22 draft Arabic translations of witness statements related to 20 witnesses.²² Since the last report, LSU has revised an additional of five draft translations. The Prosecution is preparing the next batch of draft Arabic translations of witness statements for the planned upcoming disclosure on 12 February 2021.

*Update on an additional issue in accordance with the Chamber’s order, issued on 12 October 2020*²³

18. Annex 4 to this report contains the latest information on this matter.

IV. CONCLUSION

19. The Prosecution continues to make every possible effort to progress the preparation of this case as quickly and effectively as possible. The Prosecution stands ready to provide the Chamber with any further information it may require.

²¹ See para. 6 above.

²² ICC-02/05-01/20-273, para. 4; ICC-02/05-01/20-273-Conf-AnxC.

²³ ICC-02/05-01/20-181-Conf, para. 13 and p. 6.

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart
Deputy Prosecutor

Dated this 5th day of February 2021

At The Hague, The Netherlands